IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6141 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

PATEL SHENAZ BANNU, MEHBOOB MIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6141 of 2002

MR HASHIM QURESHI for Petitioner No. 1-3

AGP, MR ABICHANDANI for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 05/07/2002

ORAL JUDGEMENT

#. Rule. Mr.P.R.Abichandani, learned AGP waives service of rule for all respondents.

#. Mr.N.M.Patel-Secretary, State Examination Board, respondent No.2 herein, is present.

#. Considering the urgency involved in the matter, the

matter is heard and finally disposed of today by this order.

#. All the three petitioners are students belonging to minority community of "Muslims". They appeared in the examination of Second Year PTC held by the respondents in the month of May, 2002. Their seat numbers are 5371, 5376 and 5380 respectively. They selected AG High School, Navrangpura, as center for examination. There are in all 12 papers. They appeared in all papers, except paper No.11 (Computer Theory). They could not appear in the examination of paper No.11 (Computer Theory), which was fixed on 10.5.2002 because of the communal riots erupted once again in the area where the petitioners were taking shelter. Therefore, on 12.5.2002 a representation was made by them to the Chairman of the respondent No.2-Board for taking their examination of paper No.11 (Computer Theory).

#. It is stated on oath in para 2.6. that the petitioners and their parents met the Chairman of the respondent No.2-Board and requested to make special arrangement for holding examination of the petitioners of paper No.11 (Computer Theory). However, except giving assurance nothing was done in the matter.

#. The result of Second Year PTC was declared on 25.6.2002. All the three petitioners, who could not remain present in the examination on 10.5.2002 for the paper No.11 (Computer Theory) were given "Zero" marks instead of showing them absent in the examination. Hence, this petition.

#. Mr.Qureshi, learned counsel for the petitioners vehemently submitted that for the reasons beyond their control, the petitioners could not appear in the examination of paper No.11 (Computer Theory). The fact that on 10.5.2002, in the particular area where the petitioner are residing, curfew was required to be imposed because of the communal riots erupted once again, was not in dispute. However, learned AGP, Shri Abichandani on the instruction from N.M.Patel, Secretary, Respondent No.2 Board submitted that on 10.5.2002 in all 3370 students appeared in the exam of paper No.11 (Computer Theory). He submitted that if so many students appeared in the examination, then the petitioners should have also appeared in the examination on 10.5.2002. Mr.P.R.Abichandani, learned AGP further submitted that the petitioners are students of P.R.Training College, Ahmedabad and out of 83 students of that college, 80 students appeared in the examination but only these three

petitioners did not appear in the examination on the excuse of riots, therefore, petition be dismissed.

#. In ordinary circumstances, perhaps this court would have considered the submission of Mr.P.R.Abichandani, but the case of the present petitioners-students stands totally on a different footing. This is a special case. Merely because 80 students of different localities of different communities appeared in the examination on 10.5.2002 that does not mean that the petitioners, belonging to minority community staying in a sensitive areas where curfew was imposed because of the communal disturbance, should also appear in the examination at the cost of their lives.

#. If any thing happened to their lives then it would have been a stigma to the State. It may be stated that out 12 papers, all the petitioners appeared in 11 papers, but unfortunately, because of the communal disturbances, broke out on 10.5.2002, they could not appear in the examination of one paper only. Without wasting any time they made representation at the earliest point of time on 12.5.2002 to the authorities but it has fallen on the deaf ears of the authority.

##. If the respondents have to take examination of only these three students and that too of a paper like Computer Theory, then there could not have been any difficulty on their part in making such arrangement. Right of education is a fundamental right guaranteed under Constitution of India to one and all, irrespective of cast or community, including the present petitioners. It is unfortunate that the respondent-authorities have failed to discharge their constitutional obligation by not holding examinations immediately and the poor students are forced to approach this court by way of this petition, after their results are declared, wherein they are declared "fail".

##. The facts and averments made on the oath, more particularly, in para 2.6. remained uncontroverted. Therefore, they have to be accepted as true. The said averments are duly corroborated by the documents, which are annexed along with the petition, including representation made to the concerned authority.

##. In view of the above discussion, this petition is allowed. The respondents are directed to hold exam of paper No.11 (Computer Theory) of Second Year PTC of the petitioners latest by 12.7.2002 and declare their results within one week thereof.

##. At this stage, a request is made by learned AGP, Mr.Abichandani on instruction from Shri Patel to give little more time for holding fresh exam i.e. up to 16.7.2002. The request is reasonable, therefore, granted. Accordingly, it is ordered that the respondents shall hold exam of the petitioners-students for the paper No.11 (Computer Theory) of PTC for the Second Year on or before 16.7.2002 and declare the result within one week thereof. Rule is made absolute. However, considering the fair approach of the respondents and their counsel, no costs is awarded.

##. This order is pronounced in the open court in presence of Mr.N.M.Patel, Secretary, Respondent No.2, therefore, formality of service of this order to the respondents is dispensed with. However, simple copy of this order be given to learned AGP Mr.P.R.Abichandani today itself for its compliance.

(B.J.Shethna, J.)
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